IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b)

Description of Case

AO_1019 of 2001

(Old No.330 of 1986)

Date of Decision :- 25-07-2006

A.F.R. (Approved for Reporting)

~~Not approved for reporting~~

Date :- 25-07-2006 Initials of Judge

Note :- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

HIGH COURT OF UTTARANCHAL, AT

NAINITAL

First Appeal from Order No.1019 of 2001

{Old No.330 OF 1986}

Laxmi Datt S/o Kamlapati Bhutt
Contractor
Cinema Line, Pithoragarh .....Appellant.

Versus

1. State of U.P. through Secretary,
   Public Works Department, U.P. Lucknow
2. Sri Ram Singh, Driver
   P.W.D., (Mechanical) Office Takana
   Pithoragarh
   District Pithoragarh ......Respondents

Sri Rajendra Dohal learned counsel for the appellant.
Sri Nand Prasad learned counsel for the State.

Hon'ble J.C.S. Rawat, J.

1. This first appeal has been filed against the Judgment and order dated 24.01.1986 passed by Sri Bhagwan Din, the then District Judge/Motor Accident Claims Tribunal, Pithoragarh in M.A.C.Case No.94/1983, whereby the learned Tribunal had dismissed the claim petition of the appellant-Laxmi Datt.

2. Brief facts of the case are that a claim petition under section 110A of the Motor Vehicles Act was filed by the injured-Laxmi Datt (appellant) alleging therein that on 27.11.1981 at about 4pm he was going through at a curve near Kotwali, Pithoragarh on his motorcycle alongwith his companion Narain Dutt Patni on the rear seat. On the way, he met

one-Govind Singh and he halted the motorcycle and started talking with him. In the meantime, the jeep bearing No.UTD 1538 while negotiating the curve in a high speed hit the halted motorcycle and pushed the appellant and Narain Dutt Patni PW3 away on the road. It was further alleged that the offending jeep ran over and smashed his right leg beneath its wheel and reduced his bones into pieces. As a result of the injuries, he fell unconscious on the spot and thereafter he was taken to hospital for medical treatment. He had further alleged that he was aged about 40 years at the time of incident and he was a contractor in the Public Works Department, Pithoragarh. The appellant-injured had claimed a sum of Rs.1,20,000/-

3. The opposite parties filed their written statements and contested the case. The opposite parties had denied the allegations made in the claim petition. The opposite parties had pleaded that the appellant-claimant was coming on his motorcycle rashly and negligently with his companion Narain Dutt Patni in the rear seat from the side of Income Tax Office. The driver of the jeep was driving the vehicle at slow speed and when the driver of the jeep saw the appellant reaching the curve in a high speed, he stopped his vehicle at the curve. The appellant came at a high speed and dashed against the rear wheel of the Jeep. The motorcycle went out of his control and due to which it titled down throwing the appellant away on the ground.

Consequently thereupon the appellant sustained the injuries on his leg and other parts of his body. It was further alleged that the accident occurred due to rash and negligent driving of the claimant himself. It was further prayer that the claim petition might be dismissed.

4. On the basis of the pleadings, the learned Tribunal framed necessary issues in the case. The parties had adduced their evidence in support of their cases. The claimant-Laxmi Datt had adduced himself as PW1. The claimant had also adduced the evidence of Narain Dutt Patni (PW2). The defence had adduced the evidence of Purshottam (DW1), Jeewan Singh Chauhan, Patwari (DW2) and Ram Singh (DW3). Besides evidence, the parties had also filed the documentary evidence.

5. Ultimately, the learned Tribunal on the basis of the pleadings of the parties and evidence had rejected the claim petition filed by the claimant. The Tribunal came to the conclusion that the version of the claimant that the accident occurred due to rash and negligent driving of the driver of offending vehicle (jeep) was an afterthought. The Tribunal had further held that the driver of the jeep was not rash and negligent at the time of accident and the accident occurred due to rash and negligent driving of the claimant(motorcyclist) himself. In this way, the learned Tribunal had dismissed the claim petition.

6. Feeling aggrieved by this, the present appeal was preferred before the Allahabad High Court from where it has been received by transfer under the U.P. Reorganization Act, 2000, for its disposal.

7. Learned counsel for the appellant-claimant contended that the impugned judgment and order was against the facts of the case. It was further contended that the appellant had fully proved that the accident took place due to rash and negligent driving of the opposite party no.2-Ram Singh, who was driver of jeep. It was further contended that the learned Tribunal had committed an illegality in rejecting the claim petition of the injured-appellant. It was further contended that the evidence adduced by the claimant had fully supported and corroborated the version of the claimant. The claimant had fully proved his case that the accident took place as a result of the rash and negligent driving of the offending vehicle. Learned Standing Counsel refuted the contention and contended that the learned Tribunal was justified in holding that the driver of the offending vehicle was not rash and negligent at the time of accident. It is pertinent to mention here that the date, time and place of the accident are admitted to the parties. It is also admitted to the parties that the injured-claimant had sustained the injury on the relevant date and time. After the accident, the

claimant was admitted in the hospital from where the doctor sent a memo Ex.A1 to the Kotwali, Pithoragarh informing the admission of the injured-claimant in the hospital. By means of memo Ex.A1 the doctor informed the police that the injured had sustained the injuries in the accident.

8. Now, the only question is to be determined as to whether the driver of the offending jeep was rash and negligent at the time of accident or the claimant himself was responsible for the accident due to rash and negligent driving of the motorcyclist.

9. In order to prove its case, the claimant-Laxmi Datt had examined himself as PW1 and he had supported the allegations made in the claim petition. The claimant had also adduced the evidence of Narain Dutt Patni PW2, who had also corroborated the evidence of the claimant. The opposite parties had adduced the evidence of Purshottam (DW1), Jeewan Singh Chauhan (DW2) and Ram Singh (DW3). Purshottam DW1 was constable at the kotwali, Pithoragarh at the relevant time and he proved the memo Ex.A1 – a communication received form the doctor. On the basis of the said memo Ex.A1 Purshottam DW1 and Jeewan Singh Chauhan (Patwari) DW2 were deputed to make the inquiry about the accident as alleged in the memo Ex.A1. Purshottam DW1 had also proved the entry dated 27.11.1981 made in the G.D. no.29 (Ex.A2) in which he had indicated that he himself and DW2 Jeewan

Singh Chauhan inquired about the accident in the hospital from the injured and Narain Dutt Patni-PW2. The injured-Laxmi Datt and Narain Dutt Patni PW2 informed them that the offending jeep was coming from the opposite side while both were negotiating the curve. Laxmi Datt-claimant PW1 and Narain Dutt Patni PW2 had further informed them that both the vehicles came close to each other and despite all the efforts to avoid the collision the vehicles collided with each other. Consequently thereupon, both of them sustained the injuries in the said accident. Laxmi Dutt PW1 had also informed the DW1 & DW2 in the hospital that he did not want any action against the driver of the jeep and he had given it in writing. Thereafter, the case was not registered against any of the drivers in this case. Purshottam DW1 had also stated that the injured Laxmi Datt and the jeep driver Ram Singh handed over written compromise Ex.A3 to Jiwan Singh Chauhan, Patwari in the hospital.

10. The opposite parties had also adduced the evidence of DW2 Jeewan Singh Chauhan, Patwari who had corroborated the evidence of DW1-Purshottam except the factum of handover the written compromise. DW2 Jiwan Singh Chauhan had turned hostile. He denied to have collected any writing in the form of compromise form the injured and the driver of the jeep in the hospital. The opposite parties had also adduced the evidence of DW3 Ram Singh, who was the driver of the jeep.

Ram Singh DW3 had supported the averments made in the written statement filed by the opposite parties. He had categorically stated that he saw the motorcycle coming towards the curve in a high speed. When he saw that the motorcyclist was driving it rashly and negligently he stopped his jeep, by the motorcycle dashed against the rear wheel of the jeep. Consequently thereupon the motorcyclist and the pillion rider fell down on the ground and they sustained the injuries. The copy of the alleged compromise filed by the respondents before the learned Tribunal has been given by the learned counsel for the appellant and the photostat copy of the same has been kept on record. The genuineness of the said document has not been disputed by the parties. Both the parties have admitted that the said document was filed before the court below. Perusal of the said document Ex.A3 reveals that the injured had no grievance against the driver of the jeep in the said accident.

11. The learned counsel for the appellant contended that according to claimant-PW1 after two-three days of the accident one unknown person alongwith the driver of the jeep came to him in the hospital. The unknown person obtained his signature on the blank paper and assured him that the expenses of his treatment would be borne by the Public Works Department. It was further contended that the PW1-claimant had denied that he had given anything in writing that the accident occurred on account of

his own fault. Learned Standing Counsel refuted the contention and contended that this is an afterthought and it cannot be taken in account. The claimant gave the said explanation at the time of evidence. He had not made any complaint to any of the higher authorities that the driver of the offending vehicle and a unknown person had taken his signature on the blank paper and it had been used against him. DW1 Purshottam and DW3 Jeewan Singh Chauhan, Patwari had categorically stated that the injured informed them in the hospital that he did not want to proceed against the driver of the jeep. The injured and Narain Dutt Patni PW2 had further informed that both the vehicles came close to each other and despite all the efforts to avoid the collision the vehicles collided with each other. Laxmi Dutt PW1 had also informed the DW1 & DW2 in the hospital that he did not want any action against the driver of the jeep and as such the case was not registered against any of the drivers in this case. Both the witnesses i.e. the injured and Narain Dutt Patni had further informed them that the injured had no grievance against the driver of the jeep. Therefore, the explanation submitted by the claimant is an afterthought and the explanation submitted by the injured cannot be believed.

12. It was further contended on behalf of the appellant that DW3 Jeewan Singh Chauhan had denied to collect written compromise. It was further contended that the said compromise cannot be

taken into account. Learned Standing Counsel refuted the contention and contended that it is true that DW3 Jeewan Singh Chauhan had been declared hostile and he had denied about the factum of receiving of written compromise. I have already indicated in the preceding paras that the injured did not want any action against the driver of the jeep and the accident took place due to the fault of both parties. Even if the written compromise is not taken into account, the oral testimony of Jeewan Singh Chauhan DW2 can be taken in account. Jeewan Singh Chauhan, Patwari DW2 had himself admitted that the injured immediately after the accident informed him that the accident took place as a result of fault of both parties. This evidence is admissible under the provisions of the Indian Evidence Act. Apart this, DW1 Purshottam had stated on oath that they received the memo Ex.A1 from the doctor about the accident. The work of inquiry was entrusted to them. He immediately made the entry in GD after making inquires from the injured and Narain Dutt Patni PW2. Purshottam DW1 had stated before the court below that he inquired about the accident from the injured and Narain Dutt Patni and both of them informed him that while both were negotiating the curve the motorcycle came close to the jeep and despite all the efforts of both parties to avoid the collision both the vehicles collided against each other. Thus, this oral evidence also leads to take an inference that the driver of the jeep was not rash and negligent at the time of accident. The said

compromise Ex.A3 cannot be discarded as it had been taken on record by DW1 also. G.D. entry recorded in the kotwali also reveals that the written compromise had been recorded in the hospital and in which it has been stated that there was no fault of the driver of the offending vehicle. Thus, this leads to take an inference that the accident took place due to the fault of the claimant.

13. In view of the foregoing discussion, I am completely in agreement with the findings recorded by the learned Tribunal. The appeal lacks merit and liable to be dismissed.

14. The appeal is dismissed. No orders as to costs.

(J.C.S.Rawat, J.)

Dated 25.07.2006

LSR